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Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3 and 6-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent and recent Federal Circuit decisions, a Section 101 process must (1) be tied to another statutory class (such as a particular apparatus), Moreover this tie must be in a non-trivial manner. That is the apparatus must be more than a trivial method of communication. In the alternative it must (2) transform underlying subject matter (such as an article or material) to a different thing. Since neither of these requirements is met by the claim, the method is not a patent eligible process under Section 101 and should be rejected as being directed to non-statutory subject matter.

Newly submitted claims 21-34 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: As discussed in the record the asset type functionally distinguished the inventive concepts. Moreover, the claims are not commensurate in scope.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-34 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard C. Weisberger whose telephone number is 571 272 6753. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571 272 6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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